Single Bench

IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

SECOND Appeal No. 440 /2005

APPELLANTS DEFENDANTS :-

1) Devi Prasad S/o late Jeevrakhan Tiwari, aged about 60 years.

2) Punaram S/o late Jeevrakhan Tiwari, aged about 55 years.

3) Dwarka Prasad S/o late Jeevrakhan Tiwari, aged 50 years.

4) Ayodhya Prasad S/o late Jeevrakhar Tiwari, aged 45 years.

5) Ramesh Kumar S/o late Jeevrakhan Tiwari, aged 40 years.

6) Harkunwar Bai Widow of Late Jeevrakhan Tiwari, aged 85 years.

7) Panchi Bai W/o Devi Prasad Tiwari, aged 45 years.

8) Parwati Bai W/o Punaram Tiwari, aged 40 years.

9) Shakun Bai W/o Dwarka Prasad Tiwari, aged 35 years.

10) Kali Bai W/o Ayodhya Prasad Tiwari, aged 33 years.

11) Kiran Bai W/o Ramesh Kumar Tiwari, aged 31 years.

All are R/o village Sabaratola, P.H. N. 56, P.S. S. Lohara, Tah. Kawardha, District Kabirdham (C.G.).

P.R. No. 2492/05 Presented by Shri R.K. Bhalerao dated 20/9/05

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VERSUS

RESPONDENTS PLAINTIFFS :-

1) Sunder Lal S/o late Himanchal Prasad Tiwari, aged 75 years, R/o village Sabaratola, P.S. S Lohara, Tahsil Kawardha, Distt. Kabirdham (C.G.).

2) State of Chhattisgarh
Through - Collector Kawardha,
District Kabirdham (C.G.).

SECOND APPEAL UNDER SECTION 100 OF C.P.C.

(20)

HIGH COURT OF CHHATTISGARH AT BILASPUR

S.A. No. 440 of 2005

Appellants Defendants : **Devi Prasad and others.**

VERSUS

Respondents Plaintiffs : **Sundar Lal and another.**

Shri Malay Bhaduri learned counsel for the appellants.
Shri J.D. Bajpai learned GA for respondent No.2/State.

JUDGMENT

(Passed on 29 -11-2005)

Dhirendra Mishra, J

The appellants/defendants have preferred this Second Appeal under section 100 of the Code of Civil Procedure against the judgment and decree dated 3.8.2005 passed by District Judge, Kabirdham in Civil Appeal No. 7-A/2005 confirming the judgment and decree dated 31.3.2005 passed by Civil Judge Class I Kabirdham in Civil Suit No. 16-A/2005.

2. The brief facts of the case are that the parties to the proceedings are the members of same family and their relationship has been described in the pedigree given in paragraph No.2 of the impugned judgment. The undisputed facts are that father of appellants No. 1 to 5 and husband of appellant No.6 namely Jeevrakhan was the real brother of respondent No.1/plaintiff and they were in all three brothers. They had 26.46 acres of agricultural land recorded jointly in their names. However, the said land was orally partitioned some 50-55 years prior to the filing of the suit and accordingly they were in possession of their respective shares. As per the oral partition 9.65 acres of land was allotted to Jeevrakhan, 8.44 acres to Nanhelal and 8.37 acres to respondent No.1/plaintiff and out of which he

(8)

sold 0.21 acres of land. It is also not disputed that Nanhelal had sold his entire holding. However, the land belonging to the parties continued to be recorded jointly. Thereafter, the plaintiff initiated proceedings for recording of the land falling in his share separately in his name which is still pending before the concerned Tehsildar.

3. Case of the plaintiff is that his brother Jeevrakhan and after his death his heirs sold their entire holding measuring 9.65 acres. Nanhelal also sold his share of the agricultural land. The plaintiff moved an application before the Revenue Authorities to get his name exclusively recorded in the revenue papers with respect to the land falling in his share as described in paragraph 6 of the plaint. However, defendants No. 1 to 6 executed a registered sale deed dated 22.7.1996 and sold the suit land to defendants 8 to 12 and the plaintiff learnt about it only when he received the notice of mutation on 31.1.1997. He thereupon lodged a complaint with the Police. Defendants No. 1 to 6 and 8 to 12 in their written statements denied the plaint allegations and stated that 9.65 acres of land as described in paragraph 5 of the plaint was in fact sold jointly by all the brothers. Land bearing Khasra No. 256/3 area 2.50 acres fell in the share of Jeevrakhan and they are in possession of the same. They further stated that the plaintiff was in possession of only 5.66 acres of land and not of 8.16 acres. They also denied the execution of any sale deed. However, they were forced to execute sale deed as the plaintiff was not ready for partition.

4. Learned trial Court decreed the suit of the plaintiff recording a finding that the plaintiff was the owner of 8.16 acres of land and the defendants 1 to 6 are not the owners of land bearing Khasra No. 256/3 area 2.50 acres and accordingly passed the decree of declaration and perpetual injunction.

5. The defendants preferred first appeal against the order of the trial Court and the first Appellate Court by the impugned judgment and decree dismissed the appeal and confirmed the judgment and decree passed by the trial Court.

6. Learned counsel for the appellants has challenged the concurrent findings recorded by both the Courts below on the ground that though the plaintiff has failed to prove oral partition, even then both the Courts below have arrived at an erroneous conclusion that on the basis of oral partition the plaintiff was the owner of the property described in paragraph 7 of the plaint. Learned counsel for the appellants further submits that the findings of both the Courts below that the sale deed in respect of land bearing Khasran No. 256/3 area 2.50 acres in favour of defendants 8 to 12 by defendants 1 to 6 has wrongly been held to be void and the said finding is perverse. It is argued that for adjudication of this appeal the substantial questions of law as enumerated just after paragraph 4 of the memo of appeal are involved.

7. I have heard learned counsel for the appellant.

8. On the basis of the pleadings of the respective parties both the Courts below have arrived at the conclusion that the land in question was orally partitioned between the shareholders. However, the same continued to be recorded jointly in the revenue papers. It is not disputed that after partition Nanhelal had sold his share of agricultural land. The trial Court in paragraph 11 of its judgment while dealing with issue No.5 has held that the land allotted to the share of Jeevrakhan was not sold jointly by all the three brothers. This finding is based on evidence adduced by the defendants in this regard. The trial Court has also arrived at the conclusion that the plaintiff was the owner of 8.16 acres of land including the disputed land of 2.50 acres and therefore, the sale deed executed with respect to the disputed land by the defendants was not binding on the

plaintiff. The above finding is based on admission of the defendants in the written statement. The stand of the defendants that disputed land bearing Khasra No. 256/3 was allotted to the share of brother Jeevrakhan has also been negatived by the trial Court and this finding is based on the pleading in the written statement as also on the evidence led by the parties. The contention of the learned counsel for the appellants that the finding of the learned trial Court which is subsequently confirmed by the impugned judgment and decree is based on improper appreciation of the evidence on record is without any substance. The learned trial Court has arrived at the above conclusion only after meticulously dealing with the pleadings and oral evidence available on record. The above finding is also based on the admission of the defendants. The other question raised by the counsel for the appellants is that though the plaintiff has prayed for separate relief of declaration without paying proper court fee and on this ground also the suit was not maintainable. From the perusal of the written statement of the defendants it is evident that no such objection regarding valuation and court fee was raised by the defendants in their written statement and therefore, the defendants cannot raise such objection for the first time at this stage.

9. Thus in view of the aforesaid discussion the judgment and decree passed by both the Courts below are strictly in accordance with law and the same are based on proper appreciation of the evidence available on record.

10. In the result, no substantial question of law is involved for adjudication of this appeal and the appeal being without merit is hereby dismissed.

Sd/-
Dhirendra Mishra
Judge